

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

COACOCHE AHAISSE,)
Petitioner,) Case No. CIV-05-354-M
v.)
MIKE MULLINS, WARDEN,)
Respondent.)

REPORT AND RECOMMENDATION

Petitioner, a state prisoner, brings this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. Pursuant to Rule 4, Rules Governing Section 2254 Cases, the Petition has been promptly examined. For the reasons stated herein, it is recommended that this action be transferred to the United States District Court for the Northern District of Oklahoma.

An application for a writ of habeas corpus filed by a state prisoner of a state which contains more than one federal judicial district may be filed in either the district where the prisoner is in custody or in the district where the prisoner was convicted. *See* 28 U.S.C. § 2241(d). In this case, however, neither the place where Petitioner is in custody nor the place of his conviction is within the Western District of Oklahoma.

In this action, Petitioner challenges his conviction in the District Court of Tulsa County, Oklahoma, in Case No. CF-2002-4070. Tulsa County is located within the Northern District of Oklahoma. Petitioner is presently incarcerated at the Oklahoma State Penitentiary in McAlester, Oklahoma. The Oklahoma State Penitentiary is located within the Eastern District of Oklahoma.

Pursuant to 28 U.S.C. § 1406(a), the district court of a district in which a case is filed laying venue in the wrong district shall dismiss, or if it be in the interest of justice, transfer the case to any district in which it could have been brought. In light of Petitioner's payment of the filing fee and the relatively short one-year statutory limitation period, it would be in the interest of justice to transfer rather than dismiss Petitioner's case.

RECOMMENDATION

It is recommended that this case be transferred to the United States District Court for the Northern District of Oklahoma pursuant to 28 U.S.C. § 1406(a).

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objections must be filed with the Clerk of the District Court by April 28th, 2005. *See* LCvR72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

STATUS OF REFERRAL

This Report and Recommendation disposes of all issues referred by the District Judge in this matter and terminates the referral.

ENTERED this 8th day of April, 2005.



VALERIE K. COUCH
UNITED STATES MAGISTRATE JUDGE